

NEW APPLICATION

LAW OFFICES

**FENNEMORE CRAIG**

A PROFESSIONAL CORPORATION



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September 9, 2002

Arizona Corporation Commission

**DOCKETED**

SEP 09 2002

**BY HAND DELIVERY**

Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

**T-01051B-02-0684**

DOCKETED BY

*CR*

Re: In the Matter of the Application of Qwest Corporation for Approval of the Facility Decommissioning Agreement as an Amendment to the Interconnection Agreement with Integra Telecom, Inc.

Dear Madam or Sir:

Pursuant to Section 252(e)(2) of the Telecommunications Act of 1996, Qwest Corporation ("Qwest") hereby submits the enclosed negotiated Facility Decommissioning Agreement ("Agreement") dated November 20, 2001, between Qwest Corporation ("Qwest") and Integra Telecom, Inc. ("Integra") as an Amendment for filing with and approval by the Arizona Corporation Commission ("Commission"). The Commission approved the underlying Interconnection Agreement between Qwest and Integra on June 30, 2000 in Docket No. T-01051B-00-1044, Decision No. 62750.

Qwest has previously submitted over 200 agreements and amendments with CLECs in Arizona for approval by the Commission under Section 252(e)(2). In addition to the filed agreements, Qwest also has implemented other contractual arrangements with CLECs that it does not believe fall within the filing requirements of Section 252.

Earlier this year questions were raised regarding Qwest's decisions in this area, most notably a complaint filed by the Minnesota Department of Commerce ("DOC") alleging, after a review of dozens of Qwest-CLEC contracts, that eleven should have been filed with the Minnesota PUC. Qwest promptly brought this matter to this Commission's attention starting in March 2002, including providing copies of our answer to the DOC complaint, and copies of those of the 11 identified agreements that also had applicability in Arizona. Qwest invited the Commission to review the agreements for itself. The Commission opened the 252(e) docket on April 9, 2002. Pursuant to a Procedural Order within that Docket, Qwest submitted 79

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agreements to Commission Staff. Qwest also filed a petition with the FCC requesting a declaratory ruling as to the scope of the Section 252(a) filing requirement in this area.

Qwest has at all times operated in good faith in filing with the Commission the pertinent interconnection agreements and amendments, and is committed to full compliance with the Act. As a further demonstration of our good faith, after this issue arose Qwest modified its processes and standards for all new agreements with CLECs. Qwest advised the Commission of this policy by letter on May 10, 2002. Under this policy Qwest is broadly filing all contracts, agreements or letters of understanding between Qwest Corporation and CLECs that create obligations to meet the requirements of Section 251(b) or (c) on a going forward basis. Qwest believes that commitment goes well beyond the requirements of Section 252(a). For example, it reaches details of business-to-business carrier relations that Qwest does not think the Communications Act requires to be filed with state commissions for approval. However, we are committed to follow this standard until the FCC issues a decision on the appropriate line drawing in this area. (Unless requested by the Commission, Qwest has not been filing routine day-to-day paperwork, orders for specific services, or settlements of past disputes that do not otherwise meet the above definition.)

Older agreements provide a more complicated case. Qwest naturally has been concerned about its potential penalty liability with regard to second-guessing of its past filing decisions in an area where the standards have not been clearly defined. Nevertheless, Qwest is now taking a further step as a sign of its good faith. Specifically, Qwest has reviewed all of our currently effective agreements with CLECs in Arizona that were entered into prior to adoption of the new policy. This group includes those agreements that relate to Section 251(b) or (c) services on an on-going basis which have not been terminated or superseded by agreement, commission order, or otherwise. Qwest has applied its broad new review standard to all such agreements and provided them here.

Qwest is petitioning the Commission to approve the attached agreements such that, to the extent any active provisions of such agreements relate to Section 251 (b) or (c), they are formally available to other CLECs under Section 252(i). For the Commission's benefit, Qwest has marked, highlighted or bracketed those terms and provisions in the agreements which Qwest believes relate to Section 251(b) or (c) services, and have not been terminated or superseded by agreement, Commission order, or otherwise, and are thus subject to filing and approval under Section 252. We are not asking the Commission to decide whether any of these agreements, or specific provisions therein, in fact are required to be filed under Section 252 as a matter of law. The Commission need simply approve those provisions relating to Section 251(b) or (c) services under its Section 252(e) procedures, and Qwest will make the going forward provisions related to Section 251(b) or (c) available under Section 251(i). Thus, the Commission does not at this time need to reach a legal interpretation of Section 252(a), or decide when the 1996 Act makes a filing mandatory, and when it does not.

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As noted above, Qwest has not been and is not filing routine day-to-day paperwork, settlements of past disputes, stipulations or agreements executed in connection with federal bankruptcy proceedings, or orders for specific services. Included in this last category are contract forms for services provided in approved interconnection agreements, such as signaling, call-related databases, and operator or directory services. The parties may execute a form contract memorializing the provision of such services offered and described in the interconnection agreement. Upon the Commission's request, Qwest can provide examples of routine paperwork, order documents, or form contracts for its review.

Qwest also has not filed contracts with CLECs arising out of bankruptcy proceedings, because such contracts relate to pre- and post-bankruptcy petition claims, adequate assurances agreements, avoidance of service interruptions and the like, and do not change the terms or conditions of the underlying interconnection agreement. In the event that a bankruptcy court finalizes an agreement that does change the terms of the existing interconnection agreement, that agreement will be filed with the state commissions under Section 252(e).<sup>1/</sup> (We have not excluded agreements with bankrupt CLECs entered into before they filed for bankruptcy.)

Qwest realizes that this voluntary decision to submit the attached agreements does not bind the Commission with respect to the question of Qwest's past compliance. However, Qwest submits that it has acted in good faith, and that this Commission will conclude that penalties are not appropriate. In any event, Qwest actions here remove any argument with respect to Qwest's compliance with Section 252 now and going forward.

Qwest requests that the Commission approve the agreements as soon as reasonably practicable. Qwest reserves its rights to demonstrate that one or more of these agreements need not have been filed in the event of an enforcement action in this area. Meanwhile, however, Qwest will offer other CLECs any terms in effect for the benefit of the contracting CLEC pursuant to the policies and rules related to Section 251(i). (Provisions that settle past carrier-specific disputes, that do not relate to Section 251, or that are no longer in effect are not subject to Section 251(i) and this offering.)

As a further sign of good faith, Qwest will also be posting the agreements on the website it uses to provide notice to CLECs and announcing the immediate availability to other CLECs in Arizona of the interconnection-related terms and conditions. This will facilitate the ability of CLECs to request terms and conditions, subject to the Commission's decision approving the agreements filed here.

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<sup>1/</sup> Qwest has an agreement with Arch Wireless in this category that was executed by the parties on July 26, 2002, but it has not yet been approved by the bankruptcy court. When approved by the court, this amendment to the Arch interconnection agreement will be filed under Section 252(e).

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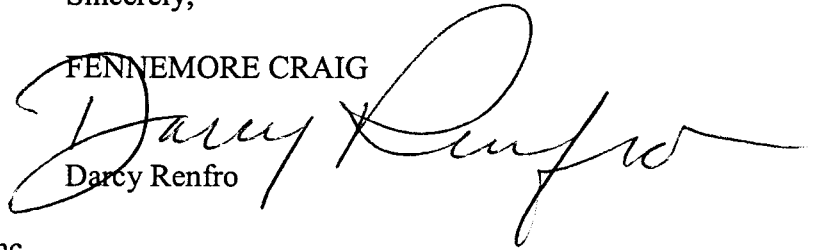
Given the confidentiality provisions contained in some of these agreements and the fact that the CLECs involved may deem the information contained therein confidential, Qwest has redacted those terms, such as confidential settlement amounts relating to settlement of historical disputes between Qwest and the particular CLEC, confidential billing and bank account numbers and facility locations, which relate solely to the specific CLEC and do not relate to Section 251(b) or (c) services.

Enclosed is a service list for this docket. Please contact me at (602) 916-5345 if you have any questions concerning the enclosed. Thank you for your assistance in this matter.

Sincerely,

FENNEMORE CRAIG

Darcy Renfro

A large, stylized handwritten signature in black ink, appearing to read 'Darcy Renfro', is written over the typed name.

Enclosures

cc: Karen Johnson, Integra Telecom, Inc.  
Ernest G. Johnson, Director, ACC Utilities Division  
Chris Kempley, Chief Counsel, ACC Hearing Division

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SERVICE LIST FOR: Qwest Communications  
Docket No. T-01051B-00-1044

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Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Mr. Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

CONFIDENTIAL & PROPRIETARY

## FACILITY DECOMMISSIONING AGREEMENT

THIS FACILITY DECOMMISSIONING AGREEMENT ("Agreement"), is made and entered into as of this 26<sup>th</sup> day of November, 2001 (the "Effective Date"), between Qwest Corporation ("Qwest") and Integra Telecom, Inc. (Qwest and Integra being sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party").

### RECITALS

WHEREAS, Qwest, a local incumbent exchange provider, and INTEGRA, a competitive local exchange provider, are parties to a certain interconnection agreement (the "Interconnection Agreement"), executed pursuant to sections 251 and 252 of the Federal Telecommunications Act of 1996 (the "Act"); and

WHEREAS, pursuant to the Interconnection Agreement, INTEGRA has purchased physical and/or virtual collocation and ancillary services from Qwest. INTEGRA now desires to return to Qwest the collocation sites identified in Exhibit A (the "Facilities") attached hereto and incorporated by reference; and

WHEREAS, the Parties voluntarily enter into this Agreement as a final resolution to disputes arising between the Parties regarding the terms and conditions of INTEGRA's return of the Facilities and the financial obligations of each Party with respect to each of the Facilities under the Interconnection Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Facility Decommissioning. In consideration for the Release and Waiver set forth below, Qwest hereby agrees to decommission the Facilities and to waive all fees and charges associated therewith.
2. Credit/Reimbursement. In the event that INTEGRA was previously invoiced and paid Qwest for the decommissioning quotes and the monthly recurring charges past the date of acceptance of the valid decommissioning application, Qwest shall make a one-time credit to INTEGRA for the sum of any non-recurring charges paid for the decommissioning and any monthly recurring charges paid for the Facilities after the date of Qwest's acceptance and validation of the decommissioning request. This credit amount will be applied, first, to satisfy any outstanding balances owed by INTEGRA to Qwest, if any. If a credit balance remains, [CHOOSE ONE: INTEGRA may request the credit be paid them via check. Such check shall be issued by Qwest within thirty (30) days of the Effective Date hereof. - OR - Qwest shall provide a one-time credit to INTEGRA to be used to offset future amounts payable to Qwest pursuant to other agreements between the Parties.]

Credit  
\$115,461.41

JN

3. Release and Waiver.

(a) For valuable consideration to be paid by Qwest to INTEGRA as provided in Sections 1 and 2 above, INTEGRA hereby releases and forever discharges Qwest and its associates, owners, stockholders, predecessors, successors, agents, directors, officers, partners, employees, representatives, employees of affiliates, employees of parents, employees of subsidiaries, affiliates, parents, subsidiaries, insurance carriers, bonding companies and attorneys, from any and all manner of action or actions, causes or causes of action, in law, under statute, or in equity, suits, appeals, petitions, debts, liens, contracts, agreements, promises, liability, claims, affirmative defenses, offsets, demands, damages, losses, costs, claims for restitution, and expenses, of any nature whatsoever, fixed or contingent, known or unknown, past and present asserted or that could have been asserted or could be asserted in any way relating to or arising out of the Facilities or this Agreement (the "Release and Waiver"). INTEGRA hereby covenants

and warrants that it has not assigned or transferred to any person any claim, or portion of any claim which is released or discharged by this Agreement.

(b) As part of the Release and Waiver described in the previous paragraph, INTEGRA expressly agrees to relinquish forever all rights and interest whatsoever in the Facilities and to remove all property it owns from the Facilities within thirty (30) days of the Effective Date of this Agreement at INTEGRA's own expense.

(c) In the event INTEGRA fails to remove its equipment from the Facilities as provided above, Qwest may, without notice or demand and in addition to any other right or remedy available at law or equity, remove all of INTEGRA's equipment from the Facility and store the same at INTEGRA's expense. INTEGRA expressly waives any damages occasioned by such removal. Any equipment so removed will be returned to INTEGRA upon payment in full of all storage costs. If within forty-five (45) days following such equipment removal, INTEGRA has not requested the return of its equipment and paid any sums owed, then Qwest may exercise all rights of ownership over such equipment including the right to sell same and retain possession of any sale proceeds. Qwest's exercise of any remedies provided for in this Section 3 shall be without prejudice to any other remedies Qwest may have provided for herein or by law.

(d) For valuable consideration to be paid by INTEGRA to Qwest as provided herein, Qwest hereby releases and forever discharges INTEGRA and its associates, owners, stockholders, predecessors, successors, agents, directors, officers, partners, employees, representatives, employees of affiliates, employees of parents, employees of subsidiaries, affiliates, parents, subsidiaries, insurance carriers, bonding companies and attorneys, from any and all manner of action or actions, causes or causes of action, in law, under statute, or in equity, suits, appeals, petitions, debts, liens, contracts, agreements, promises, liability, claims, affirmative defenses, offsets, demands, damages, losses, costs, claims for restitution, and expenses, of any nature whatsoever, fixed or contingent, known or unknown, past and present asserted or that could have been asserted or could be asserted in any way relating to or arising out of the decommissioning fees for those Facilities set forth in Exhibit A hereto.

#### 4. Confidentiality.

(a) The Parties expressly agree that they will keep the substance of the negotiations and or conditions of the settlement and the terms or substance of this Agreement strictly confidential. The Parties further agree that they will not communicate (orally or in writing) or in any way disclose the substance of negotiations and/or conditions of the settlement and the terms or substance of this Agreement to any person, judicial or administrative agency or body, business, entity or association or anyone else for any reason whatsoever, without the prior express written consent of the other Party unless compelled to do so by law. It is expressly agreed that this confidentiality provision is an essential element of this Agreement. The Parties agree that this Agreement and negotiations, and all matters related to these two matters, shall be subject to the Rule 408 of the Rules of Evidence, at the federal and state level. The Parties further agree that in the event of a breach of the confidentiality provisions of this Agreement, the harm suffered by the injured Party would not be compensable by monetary damages alone and, accordingly, that the injured Party shall, in addition to other available legal or equitable remedies, be entitled to seek an injunction against such breach.

(b) In the event either Party has a legal obligation which requires disclosure of the terms and conditions of this Agreement, the Party having the obligation shall immediately notify the other Party in writing of the nature, scope and source of such obligation so as to enable the other Party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided for in this Agreement. At least ten days advance notice under this paragraph shall be provided to the other Party, whenever possible.

#### 5. Binding Arbitration. Any claim, controversy or dispute between the Parties in connection with

this Agreement, shall be resolved by private and confidential arbitration conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator shall only have the authority to determine breach of this Agreement, but shall not have the authority to award punitive damages. The arbitrator's decision shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees and shall share equally in the fees and expenses of the arbitrator.

6. Full Settlement. The Parties acknowledge and agree that legitimate disputes regarding collocation facility decommissioning and the monetary obligations of each of the Parties have been raised and that the resolution reached in this Agreement represents a binding compromise of the Parties' positions. Therefore, the Parties agree that resolution of the issues contained in this Agreement shall be deemed full and complete and, except as provided in Section 5 above, cannot be used to the detriment of either Party.

7. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Colorado, and shall not be interpreted in favor or against any Party to this Agreement except as expressly provided herein.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cannot be rescinded, amended or modified except in a writing executed by authorized representatives of both Parties. The Parties have entered into this Agreement after conferring with legal counsel. Each of the Parties forever waives all right to assert that this Agreement was a result of a mistake in law or in fact.

9. Binding Agreement. The terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon, the Parties, their respective successors, affiliates and assigns.

10. Severability. If any provision of this Agreement should be declared to be unenforceable by any administrative agency, court of law, or other tribunal of competent jurisdiction the remainder of the Agreement shall remain in full force and effect, and shall be binding upon the Parties hereto as if the invalidated provision were not part of this Agreement.

11. Waiver. The waiver of any right on one or more occasions by either Party shall not constitute a waiver of any such right in any other instance.

12. Counterparts. This Agreement may be executed by facsimile signature (provided it is immediately followed by the original by mail) and in any number of counterparts, each of which would be deemed to be original and all of which taken together shall constitute one and the same agreement.

13. Rules of Construction. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require. Unless expressly defined herein, words having well known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

IN WITNESS THEREOF, the Parties have caused this Facility Decommissioning Agreement to be executed as of this 16 day of November 2001.

INTEGRA Telecom Inc.

QWEST CORPORATION



EXHIBIT A

Name	BAN	Submit Date	Validation Date	Decommissioning Completion Date (Actual Date MRCs Ceased)	State	CLLJ	CO Name	Decommission NRCs Paid	Decommission NRCs Not Paid	MRC Ban #	Monthly Recurring Charges
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REDACTED